

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION**

MASSEY METALS COMPANY, INC.;
MASSEY FABRICATORS, INC.; PROFESSIONAL
STAFFING - ABTS, INC. D/B/A ABLE BODY
TEMPORARY SERVICES; GARY JAMES, INC.,
D/B/A LABOR FINDERS OF SEBRING;
PACESETTER PERSONNEL SERVICE;
TRADE SOURCE; AND, WORKERS TEMPORARY
STAFFING, INC.,

Joint Employers,

Case No. 27-RC-8142
(Formerly, 12-RC-8715)

and

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION No. 15, AFL-CIO,

Petitioner.

**SUPPLEMENTAL DECISION
AND
ORDER TO OPEN AND COUNT BALLOTS**

As more fully described below, on December 3, 2004, I issued an Order to Show Cause, ordering the Petitioner to show specific cause, supported by applicable case authority, as to why I should not issue a Supplemental Decision and Order to Open and Count Ballots, modifying the unit description in this matter in accordance with the Board's November 30, 2004 Order. Pursuant to the Order to Show Cause, any response was to be filed by the close of business December 17, 2004, however, no response has been filed. On the basis that the Petitioner has not replied to my Order to Show Cause, I hereby issue this Supplemental Decision and Order to Open and Count Ballots.

Background

Following the conduct of a representation hearing held in Region 12 and transfer of the case to Region 27 for purposes of decision writing, I issued a Decision and Direction of Election in this matter on November 30, 2001, relying in major part on the Board's holding in M.B. Sturgis, Inc., 331 NLRB 1298 (2000).¹ The bargaining unit determined to be appropriate was described in the Decision and Direction of Election as follows:

INCLUDED: All fulltime and regular parttime sheet metal mechanics, fabricators, and helpers employed by Joint Employer Massey Metals Company, Inc., and Massey Fabricators, Inc., at its facility located at 2501 North 29th Street, Tampa, Florida, including employees supplied by Professional Staffing - ABTS, Inc. d/b/a Able Body Temporary Services; Gary James, Inc., d/b/a Labor Finders of Sebring; Pacesetter Personnel Service; Trade Source; and Workers Temporary Staffing, Inc.

EXCLUDED: All office clerical employees, guards, and supervisors as defined in the Act.

Pursuant to that Decision and Direction of Election, an election was conducted on January 24, 2002. Because of pending Requests for Review, the ballots of the Supplier Employers' employees were challenged and segregated from the unchallenged ballots of the User Employer's employees. All of the ballots were impounded pending a ruling by the Board on the Requests for Review. On April 26, 2002, the Board (Chairman Hurtgen and Member Bartlett with Member Liebman dissenting in part as she would deny review) issued an Order reading as follows:

¹ The Decision and Direction of Election noted that the parties had stipulated at hearing that Massey Fabricators, Inc. is a joint employer with Massey Metals Company, Inc. and that this entity was referred to as the User Employer. The Decision and Direction of Election further found that separate business entities Professional Staffing - ABTS, Inc. d/b/a Able Body Temporary Services; Gary James, Inc., d/b/a Labor Finders Of Sebring; Pacesetter Personnel Service; Trade Source; and Workers Temporary Staffing, Inc., who were referred to as Supplier Employers, individually constituted joint employers with the User Employer.

The Requests for Review filed by Pacesetter Personnel Service and the other four Supplier Employers 1/ for review of the Regional Director's Decision and Direction of Election are granted as they raise substantial issues regarding whether: (1) under M.B. Sturgis, 331 NLRB No. 173 (2000), the unit found appropriate is not a multiemployer unit; and (2) there is a sufficient community of interest between and among the employees of the five supplier employers and/or between and among the suppliers' employees and the user's employees so that all are to be included together in the unit. In all other respects, the requests for review filed by Pacesetter Personnel Service and the other four Supplier Employers are denied. Petitioner's appeal of the Regional Director's determination denying Petitioner's request to conduct a mail ballot election is denied on the merits.

1/ Able Body Temporary Services, Labor Finders of Sebring, Trade Source, and Worker's Temporary Staffing.

On November 19, 2004, the Board issued a decision in H.S. CARE L.L.C., d/b/a Oakwood Care Center, 343 NLRB No. 76 (2004), reversing its holding in M.B. Sturgis, Inc., upon which my principle findings in the Decision and Direction of Election relied. Specifically the Board found:

[T]hat permitting a combined unit of solely and jointly employed employees, as the Board did in Sturgis, contravenes Section 9(b) by requiring different employers to bargain together regarding employees in the same unit. We hold that combined units of solely and jointly employed employees are multiemployer units and are statutorily permissible only with the parties' consent.

Subsequently, on November 30, 2004, the Board (Chairman Battista, Member Schaumber, and Member Meisburg) issued an Order in the instant case, remanding it to me for further appropriate action consistent with its holding in Oakwood Care Center.

THE APPROPRIATE UNIT

Based on the forgoing, I find that the appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:

INCLUDED: All fulltime and regular parttime sheet metal mechanics, fabricators, and helpers employed by Joint Employer Massey Metals Company, Inc., and Massey Fabricators, Inc., at its facility located at 2501 North 29th Street, Tampa, Florida.

EXCLUDED: All office clerical employees, guards, supervisors as defined in the Act, and all employees supplied by Professional Staffing - ABTS, Inc. d/b/a Able Body Temporary Services; Gary James, Inc., d/b/a Labor Finders of Sebring; Pacesetter Personnel Service; Trade Source; and Workers Temporary Staffing, Inc.,

ORDER

IT IS ORDERED that the impounded ballots of the Joint User Employer's employees in the unit described above be opened and counted by Region 12 at a date and time to be determined by Region 12. In accordance with the original Order transferring this case from Region 12 to Region 27, this case is hereby automatically transferred back to Region 12 with the issuance of this Supplemental Decision.

Dated at Denver, Colorado, this 22nd day of December 2004.

/s/ B. Allan Benson
B. Allan Benson
Regional Director
National Labor Relations Board
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